

)	
E.W., Appellant)	
)	
and)	Docket No. 20-1569
)	Issued: January 10, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Austin, TX, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On December 9, 2014 appellant, then a 40-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2014, he sustained left shoulder strain when he picked up a flat tub with both hands that caught on the bottom of a postal container while in the performance of duty. OWCP initially accepted appellant's claim for left upper arm acromioclavicular and shoulder strain. It subsequently expanded the acceptance of the claim to include mid-cervical region disc disorder with radiculopathy, left articular cartilage disorder, and sprain of the right shoulder rotator cuff joint.

On September 19, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a report dated April 3, 2019, Dr. Anthony Hicks, a preventative medicine specialist, indicated that appellant was not at maximum medical improvement (MMI) regarding his cervical fusion, but that he was at MMI regarding his left shoulder. He found that appellant had 13 percent permanent impairment of the left shoulder pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹

By decision dated May 31, 2019, OWCP denied appellant's claim for a schedule award, finding that he was not at MMI.

In a report dated May 8, 2019, Dr. John Ellis, a Board-certified family practitioner, examined appellant in order to provide an evaluation of his percentage of impairment. Referring to the A.M.A., *Guides*, he calculated using the diagnosis-based impairment (DBI) method that appellant had 24 percent permanent impairment of the right upper extremity and 28 percent permanent impairment of the left upper extremity. He noted that appellant's date of MMI was May 8, 2019.

On July 9, 2019 appellant again filed a Form CA-7 claim for a schedule award.

In a report dated July 17, 2019, Dr. Hicks noted a diagnosis of left shoulder arthroscopic superior labral anteroposterior repair completed on September 17, 2015. Based upon this diagnosis and referencing the A.M.A., *Guides*, he calculated 13 percent permanent impairment of the left upper extremity using the DBI method. Dr. Hicks noted that appellant was at MMI regarding his left shoulder injury, but was not at MMI regarding his cervical fusion.

On July 30, 2019 OWCP referred the record, including a statement of accepted facts (SOAF), to Dr. Jovito Estaris, a physician Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), and requested that he evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. It specifically requested that Dr. Estaris review and comment upon the July 17, 2019 report of Dr. Hicks.

In a report dated August 8, 2019, Dr. Estaris reviewed the medical record, including the July 17, 2019 report of Dr. Hicks. Referencing the sixth edition of the A.M.A., *Guides*, he noted that while Dr. Hicks had provided an impairment rating of 13 percent for the left upper extremity for labral tears, the highest impairment rating for the relevant grid was 5 percent. Dr. Estaris further noted that Dr. Hicks had stated that appellant was at MMI regarding his left shoulder injury, but not at MMI regarding his cervical fusion. He recommended that an impartial medical evaluation be performed to obtain an impairment rating after MMI was reached and stated that a current electrodiagnostic study of the upper extremities should be provided.

In a letter dated September 4, 2019, OWCP informed appellant that it had determined a conflict in the medical evidence regarding his impairment rating existed in his case and referred him to Dr. James Hood, a Board-certified orthopedic surgeon, for a referee examination. The SOAF provided to Dr. Hood did not note acceptance of appellant's right shoulder condition.

In a report dated October 2, 2019, Dr. Hood, as the impartial medical examiner (IME), referenced the sixth edition of the A.M.A., *Guides*, and calculated that appellant had 12 percent

¹ A.M.A., *Guides* (6th ed. 2009).

permanent impairment of the left upper extremity, 2 percent for ulnar neuropathy and 10 percent for his shoulder conditions. He noted that appellant's shoulder could not be rated under diagnostic criteria, as appellant had consistent abnormal motion.

By decision dated October 28, 2019, OWCP granted appellant a schedule award for 12 percent impairment of the left upper extremity.

Appellant continued to submit duty status reports, progress reports, and other medical documentation dated from November 7, 2019 through February 6, 2020.

On March 10, 2020 appellant requested reconsideration of OWCP's October 28, 2019 schedule award decision. With his request, he submitted a statement dated February 6, 2020, wherein he related his discussion with Dr. Hood regarding his left shoulder, right shoulder, and cervical conditions.

OWCP also received a letter dated February 7, 2020 from Dr. Ellis, in which he discussed appellant's permanent impairment rating, specifically noting his disagreement with Dr. Hood's rating regarding appellant's right shoulder condition and January 15, 2017 cervical EMG results. It also received a note dated February 14, 2020 from Dr. Hicks wherein he also related his disagreement with Dr. Hoods's rating, noting his failure to consider appellant's right shoulder impairment and appellant's cervical EMG results. OWCP received reports from Dr. Hicks outlining appellant's treatment history with the latest visit recorded on March 5, 2020.

By decision dated March 18, 2020, OWCP denied appellant's reconsideration request. It noted that the evidence reviewed in support of his reconsideration request was an impairment rating from Dr. Hicks dated March 5, 2020, which OWCP found was an exact copy of his July 17, 2019 impairment rating.

The Board has duly considered the matter and finds that the case is not in posture for decision. In the case of *William A. Couch*,² the Board held that when adjudicating a claim OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on reconsideration appellant submitted a note dated February 14, 2020 from Dr. Hicks and a letter dated February 7, 2020 from Dr. Ellis, as well as reports from Dr. Hicks outlining appellant's treatment history with the latest visit recorded on March 5, 2020. Following OWCP's October 28, 2019 schedule award decision, but prior to appellant's reconsideration request, it also continued to receive medical evidence from November 7, 2019 through February 6, 2020. OWCP, however, did not review this evidence in its March 18, 2020 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.³

² 41 ECAB 548 (1990); *see also K.B.*, Docket No. 20-1320 (issued February 8, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ On remand, following other such further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the March 18, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 10, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁴ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see also L.B.*, Docket No. 21-0140 (issued August 25, 2021); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 2.